IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

RAJ KUMAR
VERSUS
DISTRICT JUDGE, SRIGANGANAGAR & OTHERS

(S.B. Civil Writ Petition No.821/2005)

DATE OF ORDER ::: FEBRUARY 10, 2005

P R E S E N T

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr. G.J. Gupta for the petitioner.

REPORTABLE BY THE COURT :

Heard learned counsel for the petitioner.

The petitioner is challenging the order dated 19.01.2005 by which the trial Court held that the petitioner is liable to pay court-fee ad valorum on the valuation of the suit as the suit filed by the petitioner does not fall in the category of cases mentioned in the Fatal Accidents Act, 1855 (for short the "Act of 1855"). Learned counsel for the petitioner submitted that the petitioner suffered injury which was caused because of the fault of the defendant-non-petitioner and in view of Section 1A even the injured person can maintain the action for recovery of damages for the wrong caused by the wrong-

doer and it is not necessary that only the claimants who can claim damages due to the death of the person alone can maintain the suit under the Act of 1855. Learned counsel for the petitioner has placed reliance upon the judgment of this High Court delivered in the case of Rajasthan State Electricity Board Vs. Dharampal Singh (2000 DNJ (Raj.) 42) wherein while considering the controversy relating to the jurisdiction of the Court in the matter of awarding interim compensation under the Act of 1855, the Court observed that interim damages awarded to the claimants and, while doing so, the Court also used the word “injured”.

I have considered the submissions of the learned counsel for the petitioner.

The preamble says that “Whereas no action or suit is now maintainable in any court against a person who, by his wrongful act, neglect, or default, may have caused the death of another person, and it is often-times right and expedient that the wrong-doer in such case should be answerable in damages for the injury so caused by him.” With this object the Act of 1855 was enacted.

Section 1A of the Act of 1855 runs as under :

"(1A.) Suit for compensation to the

> family of a person for loss occasioned to it by his death by actionable wrong.-Whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued, shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime.
>
> Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased;
>
> and in every such action, the court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought, and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties, or any of them, in such shares as the Court by its judgment or decree shall direct." (Emphasis supplied)

A bare perusal of the Section 1A clearly reveals that under the Act of 1855, the suit for compensation can be filed not by the victim for the loss occasioned to him by inflicting of injury to him but is maintainable by the persons referred in the Section 1A of the Act of 1855 for the loss caused due to death of a person.

The second part of Section 1A further provides that such action or suit shall be for the benefit of wife, husband, parent or children of the deceased only and it also provided that the suit shall be brought by and in the name of executor, administrator or representative of the person deceased.

The third part of Section 1A empowers the Court to award damages proportionate to the loss resulting from such death to the parties obviously referred in second part of Section 1A of the Act of 1855.

The language as used in Section 1A is very clear but it is more clear in the light of the remaining provisions of the Act which clearly provide that as per sub-section (2) the "claim for loss to the estate of the deceased" can be included in the same suit in which the "damages has been claimed by the executor, administrator or representative of the deceased."

In view of the above, the suit for damages caused due to the inflicting of the injury only and death has not resulted is not maintainable under the Act of 1855.

A bare perusal of the judgment relied upon by the learned counsel for the petitioner in 2000 DNJ (Raj.) 42, it is clear that the point in controversy raised in this writ petition was never the subject-matter of the controversy before the Court in the above-

mentioned case and the controversy in that case was only in respect of the question whether any interim award could be passed under the Act of 1855. In that view of the matter, I do not find any merit in the present writ petition. The impugned order is just and proper and does not warrant interference by this Court.

The petitioner has also challenged the order by which the trial Court allowed the application of the defendant Municipal Council, Sriganganagar and rejected the plaint of the petitioner against the Municipal Council on the count that the petitioner did not serve the notice as required under the Rajasthan Municipalities Act. I do not find any irregularity or illegality in the said order.

In the result, the writ petition fails and is hereby dismissed.

(PRAKASH TATIA), J.

Ojha, a./S.phophaliya